



IP Communications

February 22, 2000

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re. Application of SBC Communications Inc. Pursuant to Section 271 of the
Telecommunications Act of 1996 to provide In-Region, InterLATA services in Texas, CC
Docket No 00-4

Dear Ms. Salas,

Enclosed for filing is IP Communications Affidavit in Docket No. 00-4.

Sincerely,

Sean Minter
Sean Minter

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEB 22 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by SBC Communications,)
Inc., Southwestern Bell Telephone)
Company, and Southwestern Bell)
Communications Services, Inc. d/b/a)
Southwestern Bell Long Distance)
for Provision of In-Region, InterLATA)
Services in Texas)
)

CC Docket No. 00-4

**REPLY OF SEAN MINTER
ON BEHALF OF IP COMMUNICATIONS CORPORATION**

Based on my personal knowledge and on information learned in the course of my business duties, I, Sean Minter, declare as follows:

Qualifications

1. My name is Sean Minter. I am the President and Chief Operating Officer of IP Communications Corporation (IPC). IPC is an innovative provider of high-speed telecommunications services including digital subscriber line (DSL). In my present position, I have the overall responsibility of developing IPC's corporate strategy and implementation. In this position, I participated in the collaborative process of the Texas Public Utility Commission's (TPUC) Section 271 proceeding (Project No. 16251). In addition to my corporate responsibilities for IPC, I also participated as a consultant on behalf of AT&T during much of Project No. 16251 and Project No. 20000 (the Operation Support Systems testing project). In this declaration, I only address issues relating to SWBT's market readiness as it affects the ability of IPC to provide DSL services to Texas consumers. Prior to assuming my current responsibilities, I was closely involved in the negotiations and arbitrations relating to AT&T's interconnection agreements with SWBT in Texas, Arkansas, Kansas, Missouri, and Oklahoma.

Purpose of Reply Declaration

2. The purpose of my reply declaration is to support the comments of the Department of Justice by updating my prior declaration with subsequent activity relating to line sharing which demonstrate the complexities surrounding the deployment of DSL services and the need to withhold 271 relief until the market for DSL is irreversibly open to competition.

IPC Specific Performance Demonstrates a Failure to Meet the Texas PUC-Developed Performance Measures

3. In the its comments, the Department of Justice correctly noted that measuring commercial performance is a key task when evaluating a 271 application.¹ Moreover, those comments lamented the lack of competitor-specific data on key measures. To help complete the picture on performance, IPC provides the following information for the actual commercial performance it has received in January and February, to date

Percentage FOC Met

<u>Month</u>	<u># of Passes</u>	<u>FOC Met</u>	<u>% Met</u>
Jan-00	11	3	27%
Feb-00	18	4	22%

Loop Make-Up Request Intervals

<u>Month</u>	<u>Avg Interval MTD</u>	<u>Shortest Interval</u>	<u>Longest Interval</u>
Jan-00	9	6	13
Feb-00	7	4	15

¹ Evaluation of the Department of Justice, CC Docket No. 00-4, Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Texas at 12-13 (DOJ Comments).

4. The performance received by IPC in January and February, despite assurances in SBC's 271 application to the contrary, demonstrate a failure to achieve the performance criteria established by the Texas PUC. Specifically, relating to PM-57, responses to loop make-up requests are taking approximately 8 days on average and, relating to PM-6, firm order confirmations (FOCs) are timely only about 25% of the time. SWBT also does not provide in its data reported to both IP Communications and the regulatory bodies the data as shown above which is the actual performance for IP Communications. Such results are not minor breaches of parity requirements but can be devastating to a new entrant particular when SBC's retail operations can quote a shorter interval than IPC can achieve due to inadequate performance by SBC. Moreover, this performance is at a time when SBC's performance is being highly scrutinized raising concerns that performance may deteriorate as the oversight lessens.

Current Aspects of SBC's Implementation of Line Sharing Demonstrate that the Market for DSL Competition Are NOT Irreversibly Open

5. There are a number of complex, detailed issues relating to the deployment of line sharing that affect the long-term development of DSL. Without nondiscriminatory implementation, the DSL marketplace will continue to be subjected to anticompetitive, non-parity methods and procedures. Moreover, any distortion to the market for DSL, will in all certainty affect the long-term competitiveness for voice services calling into question whether the market for voice services could be deemed to be irreversibly open to competition.

6. Beginning on Page 24 of its comments, the Department of Justice begins its discussion regarding the burden on SBC to demonstrate that the placement of its retail DSL activities will alleviate current discrimination.² As laid out by the Department of Justice, the Commission should rigorously examine the relationship that will exist between the affiliate and

² Id. at 24.

the local exchange company.³ Second, the Commission should examine the mechanisms that exist to detect, monitor and deter any discriminatory behavior.⁴ Finally and most critical, where an ILEC fails to demonstrate that it is currently providing wholesale services relating to DSL deployment in a competitively neutral manner, the ILEC should be required to demonstrate that creation of a separate DSL affiliate **has in fact cured** the 251 violation rather than putting forth hypothetical discussion regarding how, in an ideal environment, the affiliate could lead to parity performance.⁵

7. These reply comments affect all three of the high-level concepts articulated by the Department of Justice as necessary in a 271 application.

8. **SBC Refuses to Provide Parity Treatment relating to the Development of Systems, Terms, and Conditions Affecting DSL Local Exchange Carriers (DLECs).** As discussed in my initial declaration, IPC is participating in SBC's Line Sharing Trial. Through participation in that trial, IPC has learned that SBC will not include in the trial a number of scenarios necessary to allow DLECs to compete at parity with SBC's current retail operations and later with SBC's data affiliate operations.

9. First, SBC has refused, to date, to modify its policy position that it will not provide splitter functionality on a UNE basis. This refusal is in spite of the fact that in a line sharing meeting there was near unanimous, if not unanimous, agreement from the CLEC community that the SBC should offer the splitter functionality as a wholesale offering.⁶ Giving

³ Id. at 25.

⁴ Id.

⁵ Id. at 25-27.

⁶ This incremental unbundled network element (UNE) approach is included in the trial; however, SBC has been clear that its policy position currently opposes such an offering on a commercial basis.

SBC the benefit of the doubt, it may only be a coincidence that the companies least benefiting this offering that SBC opposes are SBC's data affiliates since they have installed equipment that integrates the splitter into their DSLAM. This example still illustrates the concern raised by the Department of Justice regarding the separating of the decision-making processes of the local exchange carrier and the data affiliate. Without the rigorous examination of existing processes to demonstrate that the decision-making process of Southwestern Bell Telephone Company (SWBT) is separate and distinct from the interests of its data affiliate, there has not been a showing that data markets are irreversibly open to competition.

10. **Preferential Treatment Prior to the Institution of the New Data Affiliate.** It has been well chronicled in this proceeding and others how discriminatory policies favoring SBC's retail data services have threatened the development of a competitive marketplace. Nowhere was that more clear than in two proceedings: (1) the line sharing proceeding where SBC's retail operations could line share with SBC voice services but DLECs could not, and (2) in the Texas DSL arbitrations where SBC was shown to have designed its existing processes and groomed loops in a manner that favored its retail data operations. Similarly, DLECs have been concerned that SBC may be engaged in large efforts to groom central offices so that its affiliate can hit the ground running on day one while competitors are laboring through a complex and staggered, roll-out process. In a line sharing trial meeting on February 17, 2000, those concerns were all but confirmed. The discussion concerned the commercial rollout of SBC's line sharing product. Specifically, for line sharing to be implemented, every central office that will support line sharing will require additional training, cabling, and installation of splitters. Because central offices share personnel within particular geographical areas, the rollout will include the infrastructure modifications at a rate of 5 central offices per week, per regional area. As discussions relating to specific implementation issues progressed, the DLECs were informed that SBC's data affiliate would not be required to delay implementation of line sharing in a central office until such time that the infrastructure was

modified in a manner that all interested DLECs could initiate line sharing within the same central office. The fact that SBC can accomplish this division in treatment calls into question what central office work has been performed for the “soon to be affiliate” prior to it being covered by measurable rules. For example, it is my understanding that SWBT could perform expedited central office work for its “soon to be affiliate” without being noticed because its retail operations are not subject to the collocation process that DLECs must follow. Again, because the burden of proof is on SBC and because SBC has not subjected its decision-making processes to a rigorous review, SBC should be found to have not met its burden of proof regarding nondiscriminatory treatment in the area of DSL competition. Moreover, this example illustrates another concern raised by the Department of Justice. Where there are existing questions regarding discriminatory treatment, as exist here, it is imperative that the separate affiliate first be established and second that SBC be required to demonstrate that through the establishment of the data affiliate has cured the lack of parity treatment. Until such a showing is made, SBC cannot demonstrate that markets are irreversibly open to competition.

11. This concludes my reply on behalf of IP Communications Corporation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing Reply on behalf of IP Communications Corporation is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read 'Sean Minter', is written over a horizontal line.

Sean Minter

Dated: February 22, 2000.